

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification and	)	CC Docket No. 96-128
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

**COMMENTS OF AT&T CORP.  
ON PETITIONS FOR RECONSIDERATION**

Pursuant to the Commission's Public Notice, Report No. 2542, released April 11, 2002, AT&T Corp. ("AT&T") respectfully submits these comments on the petitions for reconsiderations filed in this proceeding.<sup>1</sup> AT&T opposes the APCC, RBOC Coalition and ITC^DeltaCom petitions and supports the WorldCom and Sprint petitions.

**I. THERE IS NO BASIS FOR THE COMMISSION TO GRANT  
APCC's REQUEST TO REINSTATE THE \$0.009 INTEREST COST  
ELEMENT IN THE RATE APPLICABLE TO RETROACTIVE  
ADJUSTMENTS OF COMPENSATION.**

In its Fourth Order on Reconsideration and Order on Remand ("*Interim Compensation Order*"),<sup>2</sup> the Commission set a new per-phone compensation rate of \$0.229 for the Interim Period (November 7, 1996 to October 6, 1997). The Commission arrived at this rate by deducting from the cost-based \$0.24 default compensation rate, the

---

<sup>1</sup> Petitions for Reconsideration were filed by American Public Communications Council, Inc. ("APCC"), ITC^DeltaCom Communication, Inc. ("ITC^DeltaCom"), RBOC Payphone Coalition ("RBOC Coalition"), Sprint Corporation ("Sprint"), and WorldCom, Inc. ("Worldcom").

<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Fourth Order on Reconsideration and Order on Remand*, FCC 02-22, released January 31, 2002.

FlexANI cost component of \$0.002<sup>3</sup> and the four-month payment delay cost component of \$0.009,<sup>4</sup> determining that this rate does should not apply to the Interim Period. APCC asserts that the Commission should reinstate the \$0.009 interest amount in the default compensation rate for the Interim Period because it claims that the four-month payment delay, for which the \$0.009 was established, is as applicable to the Interim Period as to other periods. Indeed, APCC claims that the Commission's *Third Report and Order*<sup>5</sup> referencing adjustments in interest in the default compensation amount makes clear that the interest payment should be added to and not subtracted from the default rate.<sup>6</sup> By removing the delay interest component of \$0.009, APCC claims that PSPs will be under-compensated for the Interim Period.

APCC's position defies logic. Contrary to APCC's interpretation, the *Third Report and Order* does not state that, in establishing a compensation amount for the Interim Period, the Commission will *increase* the default amount. Instead, the *Third Report and Order* expressly states that the Commission "anticipate[s] *adjusting* the default compensation amount for the Interim Period to account for FLEX ANI costs and interest."<sup>7</sup> In implementing these adjustments in the subsequent *Interim Compensation*

---

<sup>3</sup> The Commission deducted \$0.002 from the default rate of \$0.24 to reflect the fact that carriers had not tariffed the cost recovery for FlexANI until after the Interim Period. *Interim Compensation Order* at ¶ 8.

<sup>4</sup> This delay cost component was originally established to compensate payphone service providers ("PSPs") for four months of delay that resulted from the quarterly payment procedure that is standard in the payphone industry. See *Interim Compensation Order* at n. 28.

<sup>5</sup> *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order, and Order on Reconsideration of the Second Report and Order*, FCC 99-7, released February 4, 1999 ("*Third Report and Order*").

<sup>6</sup> APCC Petition at 5.

<sup>7</sup> *Third Report and Order* at ¶ 197 (emphasis added). Significantly, the Commission noted: "After the release of the *Third Report and Order*, no comments were received that opposed this adjustment for interim compensation." *Interim Compensation Order* at ¶ 9.

*Order*, the Commission appropriately determined that the interest rate “adjustment” should include a reduction of \$0.009. The Commission found that the \$0.009 cost component “is not applicable for interim compensation because it was calculated specifically for the four-month delay in payment for the per-call period,” not the Interim Period.<sup>8</sup>

The Commission’s determination makes perfect sense. The *Interim Compensation Order* provides for payment of interest on owed amounts at the IRS interest rate. The payment of this IRS interest covers all interest obligations, and APCC’s arguments regarding a “delay” factor are thus irrelevant. If the amounts due for each quarter of the Interim Period are defined as due on the last day of the quarter (resulting in a net lag of 30 days – a standard commercial period for payment), application of the IRS rate is fully compensatory and inclusion of the \$0.009 would result in overcompensation.<sup>9</sup>

**II. THE COMMISSION SHOULD NOT ALTER ITS DETERMINATION THAT PAYMENT ADJUSTMENTS ARE TO BE MADE DIRECTLY BETWEEN THE CARRIER AND THE PSPs AND THAT OVERPAYMENTS MAY BE DEDUCTED FROM FUTURE PAYMENTS.**

APCC’s request that the Commission require overpaying carriers and underpaying carriers to make retroactive adjustments among themselves for the Interim Period has already been rejected by the Commission, and APCC’s Petition offers no new basis for the Commission to alter its decision. First, as the Commission noted in the *Interim Compensation Order*, “since November 7, 1996, the first day of the Interim Period, there

---

<sup>8</sup> *Interim Compensation Order* at ¶ 9.

<sup>9</sup> For this reason the Commission also should reject the RBOC Coalition’s argument that the Commission should set an interest rate based on the Local Exchange Carriers’ cost of capital. *See* RBOC Coalition Petition at 2.

has been substantial turnover in the telecommunications industry as companies merged, changed ownership, reorganized, changed names or left the industry.”<sup>10</sup> Moreover, the problems of determining the interim compensation amount owed by each individual carrier would be significantly exacerbated if the Commission required overpaying carriers and underpaying carriers to make retroactive adjustments among themselves, rather than directly with the PSPs, with whom these same carriers have had direct relationships.

The PSPs, who are the beneficiaries of such payments, are responsible for handling their financial arrangements with the paying carriers. The Commission has recognized that “the statute and our regulations contemplate payment relationships between carriers and PSPs, *not* the Commission establishing complicated intercarrier adjustments.”<sup>11</sup> Moreover, the Commission properly held that no carrier “must be required to pay for payphone calls received by other carriers.”<sup>12</sup>

APCC’s request that the Commission prohibit carriers that have overpaid PSPs during the Interim Period from deducting these monies from future payment also should be rejected. Such true-up adjustments are a common business practice in both the wholesale (*e.g.*, international settlements arrangements), and retail markets (*e.g.*, deducting overpayments from customers’ future bills.) The Commission acknowledged this common practice in determining that “[i]n the event that the amount the IXC overpaid is larger than the amount it owes to the PSP for the Interim Period, the IXC may

---

<sup>10</sup> *Id.* ¶ 34.

<sup>11</sup> *Interim Compensation Order* at ¶ 34 (emphasis added).

<sup>12</sup> *Id.* ¶ 15.

deduct the remaining overpayment from future payments to PSPs.”<sup>13</sup> There is no basis to disturb this practice here.

### **III. THE D.C. CIRCUIT’S *ILLINOIS* DECISION PROHIBITS THE COMMISSION FROM EXEMPTING CARRIERS FROM THEIR PAYMENT OBLIGATIONS.**

ITC^DeltaCom argues that small IXC’s should be exempt from paying compensation to PSPs, because imposition of this payment obligation would be unduly burdensome and unfair.<sup>14</sup> This argument, however, was squarely rejected by the D.C. Circuit.<sup>15</sup>

In its *Illinois* decision, the D.C. Circuit held that “[it] is far from clear that the administrative burdens are as heavy as the FCC seems to believe them to be, as each carrier would merely be required to write a check based on its percentage of annual toll revenues.”<sup>16</sup> Also, as the *Illinois* court recognized, any administrative convenience would come at a huge cost to the large IXC’s (those with over \$100 million in toll revenues); “if small IXC’s were included, they could be required to pay as much as \$4 million *per month*. As small IXC’s concede, this amount is “far from *de minimis*.”<sup>17</sup> Thus, the D.C. Circuit concluded that “[a]dministrative convenience cannot possibly justify an interim plan that exempts all but large IXC’s from paying for the costs of

---

<sup>13</sup> *Third Report and Order* at ¶ 198.

<sup>14</sup> ITC^Deltacom Petition at 8.

<sup>15</sup> *Ill. Pub. Telecomm. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh’g*, 123 F.3d 693 (D.C. Cir. 1997), *cert denied sub nom. Va, State Corp. Comm’n v. FCC*, 523 U.S. 1046 (1998) (“*Illinois*”).

<sup>16</sup> *Illinois*, 117 F.3d at 565.

<sup>17</sup> *Id.*

services received.”<sup>18</sup> In implementing the court’s finding, the Commission correctly determined that no carrier “must be required to pay for payphone calls received by other carriers.”<sup>19</sup>

**IV. THE COMMISSION SHOULD ASSURE THAT ITS ORDER ESTABLISHING THE APPROPRIATE ALLOCATION GIVES IXC’S AMPLE TIME TO CALCULATE THE PAYMENT AMOUNTS.**

The Commission should reject the RBOC Coalition’s request to make the effective date of its order determining the appropriate allocations and establishing carriers’ obligations for the Interim Period 30 days from publication in the Federal Register. As WorldCom states in its comments, “[c]alculating the various debits and credits for the Interim and Intermediate Periods for all PSPs and IXC’s will be a very large and administratively difficult task that could take as much as nine months from the date at which the Commission determines how to allocate payment responsibility among carriers.”<sup>20</sup> Calculating the amounts involves processing huge volumes of data that must be processed for each quarter. The data must then be reviewed and sometimes reprocessed to account for any inaccuracies in the original data. The large churn among payphone owners only exacerbates the problem. Thus, AT&T agrees with WorldCom that the Commission should set the effective date of its allocation order to be nine months from the date of publication in the Federal Register.

---

<sup>18</sup> *Id.*

<sup>19</sup> *Interim Compensation Order* at ¶ 15.

<sup>20</sup> WorldCom Petition at 4.

**V. THE COMMISSION SHOULD REINSTATE THE MONTHLY NUMBER OF COMPENSABLE CALLS MADE FROM PAYPHONES DURING THE INTERIM PERIOD TO 131.**

Sprint properly requests that the Commission reevaluate its methodology for adjusting the average monthly call figure from 131 to 148,<sup>21</sup> or reinstate its original monthly estimate of 131 average monthly calls per payphone.<sup>22</sup> AT&T agrees. First, as Sprint points out, in establishing a monthly payphone call average of 148, the Commission increased the monthly per-phone number of calls by merely averaging seven data points, which represented a call volume range from 132 to 163 calls per month.

Yet, as Sprint points out, even if the data points averaged by the Commission were statistically valid, the resulting 148 monthly call estimate is flawed because the Commission failed to weight the average of those estimates. As Sprint explains (at 9):

Some of the data points represent as little as a few thousand payphones and others represent hundreds of thousands. The data provided by the RBOC Coalition represent ‘over 400,000’ payphones but they received the same weight as a figure APCC admitted was backed by fewer than 5,100 selected payphones on average.”<sup>23</sup>

This is clearly improper.

AT&T recommends that, rather than go through the time-consuming process for developing a new methodology, the Commission should instead reinstate its original estimate of 131 calls per month, which, notably, no party in the proceeding challenged through the entire appeal process in the *Illinois* case.

---

<sup>21</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 20541 (rel. Sept. 20, 1996) (“*First Report and Order*”). The estimated number of monthly calls is multiplied by the Interim Rate of \$0.229 to yield a monthly Interim Period compensation amount of \$33.892. Each carrier is responsible for its proportionate share of the \$33.892.

<sup>22</sup> Sprint Petition at 4.

<sup>23</sup> *Id.* at 9.

## CONCLUSION

For the reasons states herein, AT&T opposes the Petitions for Reconsideration filed by APCC, RBOC Coalition, and ITC^DeltaCom and supports the Petitions for Reconsideration filed by WorldCom and Sprint.

Respectfully submitted,

AT&T CORP.

/s/ Teresa Marrero  
Mark C. Rosenblum  
Stephen C. Garavito  
Teresa Marrero  
295 North Maple Avenue  
Basking Ridge, NJ 07920  
(908) 221-5816

May 1, 2002



## CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2002, I caused a copy of the foregoing comments to be sent via first-class mail to the following:

Albert H. Kramer  
Robert F. Aldrich  
Robert N. Felgar  
2101 L. Street, NW  
Washington, DC 20037-1526

Attorneys for the American Public  
Communications Council

Robert J. Aamoth  
Steven A. Augustino  
Randall W. Sifers  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, NW  
Suite 500  
Washington DC 20036

Attorneys for ITC^DeltaCom  
Communications, Inc.

Michael K. Kellogg  
Aaron M. Panner  
Kellogg, Huber, Hansen, Todd & Evans,  
P.L.L.C.  
1615 M Street, NW  
Suite 400  
Washington, DC 20036

Attorneys for the RBOC Payphone  
Coalition

John E Benedict  
H. Richard Juhnke  
Sprint Corporation  
Suite 400  
401 Ninth Street, NW  
Washington, DC 20004

Larry Fenster  
WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036

/s/ Christine Kachurak  
/s/ Christine Kachurak